

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**MICHAEL KLEINMAN,
MMK HOLDINGS, LP and
AUSPRO ENTERPRISES, LP**

Plaintiffs,

v.

CITY OF CEDAR PARK

Defendant.

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CIVIL ACTION NO. 1:22-cv-00527-LY

JOINT ADVISORY TO THE COURT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, the City of Cedar Park (“Defendant” and/or “City”); and Plaintiffs Michael Kleinman, MMK Holdings, LP, and Auspro Enterprises, LP, (“Plaintiffs”) (collectively referred to as “the Parties”) file this Joint Advisory to the Court in accordance with the Court’s Order [Dkt. 9] regarding the status of the parties’ negotiations as to the remaining disputed issues that will require resolution by the Court.

On June 29, 2022, attorneys for Plaintiffs and Defendant conferred by telephone regarding a continuance of the hearing previously scheduled for July 7, 2022 and Defendant’s Rule 12 Motion to Dismiss [Dkt. No. 5] in order to allow for limited, expedited discovery on certain disputed issues potentially relevant to those motions and allegations in Plaintiffs’ Original Complaint that may need to be amended. The attorneys for Plaintiffs and Defendant also conferred on Plaintiffs’ Motion for Temporary Restraining order [Dkt. No. 2], and Plaintiffs’ request for the City to voluntarily reconnect the water and sewer services to the buildings on the subject property.

On June 29, 2022, Plaintiffs filed a Motion for Continuance of Hearing on Motion to Dismiss and Motion for Limited, Expedited Discovery [Dkt. No. 10]. Counsel for Defendant was unable to speak with its client and get back to Plaintiffs' counsel regarding Plaintiffs' request for an agreed continuance and limited, expedited discovery prior to the filing of this Motion.

Defendant does not agree to Plaintiffs' request that Defendant voluntarily reconnect the water and sewer services to the buildings on the subject property.

On June 29, 2022, Plaintiffs filed a First Amended Complaint [Dkt. No. 11] addressing the issues the Parties discussed previously.

On June 30, 2022, the Court signed an Order [Dkt. No. 13] dismissing without prejudice Defendant's Rule 12 Motion to Dismiss. [Dkt. 5] as a result of Plaintiffs' First Amended Complaint. As a result, Plaintiffs' Motion for Continuance and Motion for Limited, Expedited Discovery is rendered moot.

The following issues remain to be resolved by the Court:

1. Plaintiffs Michael Kleinman, MMK Holdings, LLP, and AusPro Enterprises, LP's Application for Temporary Restraining Order. [Dkt. No. 2].
2. The City's oral objections to the proposed hearing on July 7, 2022 in light of the Court's statement that it would consider Plaintiffs' Application for Temporary Restraining Order as a request for a temporary injunction. As Plaintiff recently filed an Amended Complaint and the elements necessary for a temporary injunction had not yet been briefed, the City respectfully requests additional time to brief these issues. The City requests that the Court enter a briefing schedule and set a full evidentiary hearing to be held on or about July 20, 2022.

Signed this 5th day of July 2022.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

I hereby affirm that on the 29th day of June 2022, and on the 5th Day of July, 2022 attorneys representing Plaintiffs and Defendant conferred by telephone and email on the matters set forth in this Joint Advisory.



SCOTT TSCHIRHART